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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91203898
Party	Defendant Beautiful People Magazine, Inc.
Correspondence Address	BEAUTIFUL PEOPLE MAGAZINE INC STE 916 101 OCEAN DR MIAMI BEACH, FL 33139 UNITED STATES
Submission	Answer
Filer's Name	Joshua Domond
Filer's e-mail	bpmagonline@gmail.com
Signature	/Joshua Domond/
Date	03/27/2012
Attachments	Answer Affirmative Defenses and Counterclaim---Beautiful People Mag.pdf (12 pages)(486315 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of Application Serial No. 85/196,831

PeopleNetwork Aps)	
AKA BeautifulPeople.com)	
)	
Opposer,)	Opposition No.: 91203898
)	Serial No. 85196831
v.)	
)	
Beautiful People Magazine, Inc.)	Answer, Affirmative
)	Defenses & Counterclaim
Applicant.)	
)	
)	
)	

Commissioner for Trademarks
TTAB—BOX FEE
P.O. Box 1451
Alexandria, Virginia 22313-1451

APPLICANT’S ANSWER, AFFIRMATIVE DEFENSES & COUNTERCLAIM

Beautiful People Magazine, Inc. (“Applicant”), a Florida corporation, by and through its president, Joshua Domond, hereby file their Answer, Affirmative Defenses and Counterclaim to Opposer’s PeopleNetwork Aps AKA BeautifulPeople.com (Opposer), and state as follows:

1. Applicant is without knowledge as to the truth of the allegations contained in paragraph 1 and therefore demand strict proof thereof.
2. Applicant is without knowledge as to the truth of the allegations contained in paragraph 2 and therefore demand strict proof thereof.
3. Applicant is without knowledge as to the truth of the allegations contained in paragraph 3, demand strict proof thereof, and therefore deny.

4. Applicant is without knowledge or information sufficient to form a belief as to the truth of the Opposer's allegation in paragraph four, and therefore deny.

5. Admit to paragraph five only as to what has been officially filed with the United States Patent and Trademark Office ("PTO") under the described serial number. However, the Applicant does not admit the validity or truth as to any filings on the part of the Opposer with the PTO.

6. Admit to paragraph six only as to what has been officially filed with the United States Patent and Trademark Office ("PTO") under the described serial number. However, the Applicant does not admit the validity or truth as to any filings on the part of the Opposer with the PTO.

7. Admit to paragraph seven only as to what has been officially filed with the United States Patent and Trademark Office ("PTO") under the described serial number. However, the Applicant does not admit the validity or truth as to any filings on the part of the Opposer with the PTO.

8. Applicant is without knowledge or information sufficient to form a belief as to the truth of the Opposer's allegation in paragraph eight, and therefore deny.

9. Deny paragraph nine.

10. Applicant is without knowledge or information sufficient to form a belief as to the truth of the Opposer's allegation in paragraph ten, and therefore deny.

11. Deny paragraph eleven.

12. Deny paragraph twelve as to any damage or injury to Opposer.

13. Deny paragraph thirteen.

FIRST AFFIRMATIVE DEFENSE

Opposer fails to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

Opposer's opposition is bared by the doctrine of laches by virtue of Opposer's failure to object to the Applicant's prior registration of a similar mark, Beautiful People In Action Reg. No. 3,850,544. Further, Opposer failed to take any action for over a year when the Applicant filed the current application that is part of this opposition.

THIRD AFFIRMATIVE DEFENSE

Opposer's opposition is bared by the doctrine of acquiescence by virtue of Opposer's failure to take any action to the Applicant's prior registration of a similar mark, Beautiful People In Action Reg. No. 3,850,544. Further, Opposer failed to take any action for over a year when the Applicant filed the current application that is part of this opposition.

FOURTH AFFIRMATIVE DEFENSE

Opposer's opposition is bared by the doctrine of estoppel by virtue of Opposer's failure to take any action to the Applicant's prior registration of a similar mark, Beautiful People In Action Reg. No. 3,850,544. Further, Opposer failed to take any action for over a year when the Applicant filed the current application that is part of this opposition.

FIFTH AFFIRMATIVE DEFENSE

Opposer lacks standing to bring this opposition and does not have any valid ground to prevent the registration of the opposed mark.

SIXTH AFFIRMATIVE DEFENSE

Applicant reserve all affirmative defenses allowed under the United States Patent Office, any other defenses at law or in equity that may now exist or in the future be available based on discovery and further factual investigation in this case.

COUNTERCLAIM TO CANCEL OPPOSER'S REGISTRATION

Beautiful People Magazine, Inc, a Florida Corporation (hereinafter "Counter Plaintiff"), submits that it will be damaged by the registration of the Beautiful People and BeautifulPeople.com work marks with Serial Numbers 85/236,075, 85/264,026, and 85/472,690 filed by PeopleNetwork Aps (hereinafter "Counter Defendant"). All the goods in the Counter Defendant applications are being opposed.

As grounds for opposition to the Counter Defendant's applications, Counter Plaintiff states as follows:

1. On September 21, 2010, the United States Patent and Trademark Office granted Counter Plaintiff a registration certificate for the mark **Beautiful People In Action**, Reg. No. 3,850,544, for use in entertainment services, namely conducting contest designed to promote socially beneficial goals for international class 14 (see attached exhibit 1).
2. On December 13, 2010, Counter Plaintiff filed an application for the mark **Beautiful People Magazine** for international class 09 with a description of services/goods as: downloadable electronic publication, namely, general interest magazine featuring philanthropy, fashion, health, food, world issues, travel, art, and entertainment (see attached exhibit 2).
3. It was not until after Counter Plaintiff's registration certificate for the mark **Beautiful People In Action** and after its application for **Beautiful People**

Magazine that Counter Defendant decide to file for marks with Serial Numbers

85/236,075, 85/264,026, and 85/472,690, which are in direct conflict with Counter

Plaintiff's registered mark and application.

4. Allowing the Counter Defendant to register these marks would be counter to the priority rights already established by the Counter Plaintiff and it would cause confusion under the Lanham Act Section 2(d), 15 U.S.C. §1052(d).

5. The Counter Defendant has not established that it has used the mark "Beautiful People" in commerce before the Counter Plaintiff's registered certificate or application.

6. The Counter Defendant also has not established that it has applied for or received any registered certificate for the mark "Beautiful People" or any derivative of that mark prior to the Counter Plaintiff's registered certificate and application.

7. The Counter Plaintiff has spent a considerable amount of money advertising, promoting, designing, and developing the marks Beautiful People in Action and Beautiful People Magazine. The Counter Plaintiff has not abandoned any of its marks and continuous to use its mark in commerce.

8. The marks identified in Counter Defendant's applications are almost identical to the Counter Plaintiff's registered mark and application.

9. If the Counter Defendant's marks are allowed to be registered it would cause confusion and dilute Counter Plaintiff's marks.

WHEREFORE, Counter Plaintiff believes that it will be damaged by the registration of Counter Defendant's Applications Serial Numbers 85/236,075,

85/264,026, and 85/472,690, and prays that the Counter Defendant's Applications to register be denied and refused.

Applicant/Counter Plaintiff's President, Joshua Domond, has been appointed with full power of attorney, substitution and revocation to prosecute this proceeding and to transact all business in the United States Patent and Trademark Office before the Trademark Trial and Appeal Board.

Please address all communications to Joshua Domond at the following address
BEAUTIFUL PEOPLE MAGAZINE INC, 101 OCEAN DR, STE 916, MIAMI
BEACH, FL 33139 UNITED STATES, bpmagonline@gmail.com, 305-305-5122.

Respectfully,

/s/ Joshua Domond
Joshua Domond
President of Beautiful People Magazine, Inc.
BEAUTIFUL PEOPLE MAGAZINE INC
101 OCEAN DR, STE 916
MIAMI BEACH, FL 33139 UNITED STATES
bpmagonline@gmail.com
305-305-5122

Certificate of Service

I hereby certify that on March 27, 2012, I electronically filed the foregoing document with the United States Patent and Trademark Office. I also certify that I have sent the foregoing document via U.S. Certified Mail to David K Caplan Keats Mcfarland & Wilson LLP, 9720 Wilshire Blvd, Penthouse Suite, Beverly Hills, Ca 90212.

/s/ Joshua Domond

Joshua Domond

President of Beautiful People Magazine, Inc.

BEAUTIFUL PEOPLE MAGAZINE INC

101 OCEAN DR, STE 916

MIAMI BEACH, FL 33139 UNITED STATES

bpmagonline@gmail.com

305-305-5122

United States of America

United States Patent and Trademark Office

Beautiful People in Action

Reg. No. 3,850,544

BEAUTIFUL PEOPLE MAGAZINE, INC. (FLORIDA CORPORATION)

Registered Sep. 21, 2010

101 OCEAN DRIVE
MIAMI BEACH, FL 33139

Int. Cl.: 41

FOR: ENTERTAINMENT SERVICES, NAMELY, CONDUCTING CONTESTS DESIGNED TO PROMOTE SOCIALLY BENEFICIAL GOALS, IN CLASS 41 (U.S. CLS. 100, 101 AND 107).

SERVICE MARK

FIRST USE 8-31-2009; IN COMMERCE 8-31-2009.

PRINCIPAL REGISTER

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

SN 77-465,398, FILED 5-5-2008.

SANI KHOURI, EXAMINING ATTORNEY



David J. Kyfos

Director of the United States Patent and Trademark Office

Trademark/Service Mark Application, Principal Register

Serial Number: 85196831 Filing Date: 12/13/2010

The table below presents the data as entered.

SERIAL NUMBER 85196831 MARK INFORMATION *MARK BEAUTIFUL PEOPLE MAGAZINE STANDARD CHARACTERS YES USPTO-GENERATED IMAGE YES LITERAL ELEMENT BEAUTIFUL PEOPLE MAGAZINE MARK STATEMENT The mark consists of standard characters, without claim to any particular font, style, size, or color. REGISTER Principal APPLICANT INFORMATION * OWNER OF MARK Beautiful People Magazine, Inc. INTERNAL ADDRESS Ste. 916 *STREET 101 Ocean Drive * CITY Miami Beach *STATE (Required for U.S. applicants) Florida *COUNTRY United States *ZIP/POSTAL CODE (Required for U.S. applicants only) 33139 LEGAL ENTITY INFORMATION TYPE corporation STATE/COUNTRY OF INCORPORATION Florida GOODS AND/OR SERVICES AND BASIS INFORMATION INTERNATIONAL CLASS 009 *IDENTIFICATION Downloadable electronic publication, namely, general interest magazine featuring philanthropy, fashion, health, food, world issues, travel, art, and entertainment FILING BASIS SECTION 1(b) ATTORNEY INFORMATION NAME Leticia Guerra ATTORNEY DOCKET NUMBER 7782-T10-004 FIRM NAME Fleit Gibbons Gutman Bongini & Bianco PL INTERNAL ADDRESS Suite 115 STREET 21355 East Dixie Highway CITY Miami STATE Florida COUNTRY United States ZIP/POSTAL CODE 33180 PHONE 305-830-2600 FAX 305-830-2605 EMAIL ADDRESS tmmiami@fggbb.com AUTHORIZED TO COMMUNICATE VIA EMAIL Yes OTHER APPOINTED ATTORNEY Paul D. Bianco, Gary Winer CORRESPONDENCE INFORMATION NAME Leticia Guerra FIRM NAME Fleit Gibbons Gutman Bongini & Bianco PL INTERNAL ADDRESS Suite 115 STREET 21355 East Dixie Highway CITY Miami STATE Florida COUNTRY United States ZIP/POSTAL CODE 33180 PHONE 305-830-2600 FAX 305-830-2605 EMAIL ADDRESS tmmiami@fggbb.com AUTHORIZED TO COMMUNICATE VIA EMAIL Yes FEE INFORMATION NUMBER OF CLASSES 1 FEE PER CLASS 325 *TOTAL FEE DUE 325 *TOTAL FEE PAID 325 SIGNATURE INFORMATION SIGNATURE /LG/ SIGNATORY'S NAME Leticia Guerra SIGNATORY'S POSITION Attorney of record, Florida bar member DATE SIGNED 12/13/2010

Trademark/Service Mark Application, Principal Register

Serial Number: 85196831 Filing Date: 12/13/2010

To the Commissioner for Trademarks:

MARK: BEAUTIFUL PEOPLE MAGAZINE (Standard Characters, see mark)

The literal element of the mark consists of BEAUTIFUL PEOPLE MAGAZINE.

The mark consists of standard characters, without claim to any particular font, style, size, or color.

The applicant, Beautiful People Magazine, Inc., a corporation of Florida, having an address of
Ste. 916,
101 Ocean Drive
Miami Beach, Florida 33139
United States

requests registration of the trademark/service mark identified above in the United States Patent and Trademark Office on the Principal Register established by the Act of July 5, 1946 (15 U.S.C. Section 1051 et seq.), as amended, for the following:

International Class 009: Downloadable electronic publication, namely, general interest magazine featuring philanthropy, fashion, health, food, world issues, travel, art, and entertainment

Intent to Use: The applicant has a bona fide intention to use or use through the applicant's related company or licensee the mark in commerce on or in connection with the identified goods and/or services. (15 U.S.C. Section 1051(b)).

The applicant's current Attorney Information:

Leticia Guerra and Paul D. Bianco, Gary Winer of Fleit Gibbons Gutman Bongini & Bianco PL

Suite 115
21355 East Dixie Highway
Miami, Florida 33180
United States

The attorney docket/reference number is 7782-T10-004.

The applicant's current Correspondence Information: Leticia Guerra Fleit Gibbons Gutman
Bongini & Bianco PL Suite 115

21355 East Dixie Highway Miami, Florida 33180 305-830-2600(phone) 305-830-
2605(fax) tmmiami@fggbb.com (authorized)

A fee payment in the amount of \$325 has been submitted with the application, representing payment for 1 class(es).

Declaration

The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. Section 1001, and that such willful false statements, and the like, may jeopardize the validity of the application or any resulting registration, declares that he/she is properly authorized to execute this application on behalf of the applicant; he/she believes the applicant to

be the owner of the trademark/service mark sought to be registered, or, if the application is being filed under 15 U.S.C. Section 1051(b), he/she believes applicant to be entitled to use such mark in commerce; to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive; and that all statements made of his/her own knowledge are true; and that all statements made on information and belief are believed to be true.

Signature: /LG/ Date Signed: 12/13/2010

Signatory's Name: Leticia Guerra

Signatory's Position: Attorney of record, Florida bar member

RAM Sale Number: 6214

RAM Accounting Date: 12/14/2010

Serial Number: 85196831

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TEAS Stamp: USPTO/BAS-75.145.230.73-2010121318484824

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BEAUTIFUL PEOPLE MAGAZINE